

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

V.

STATE OF WASHINGTON, *et al.*,

Defendants.

Case No. C70-9213
Subproceeding: 17-03

**STIPULATED PROTECTIVE ORDER
AS TO STILLAGUAMISH
FINANCIAL INFORMATION**

**NOTE ON MOTION CALENDAR:
November 16, 2020**

STILLAGUAMISH TRIBE OF INDIANS.

Petitioner(s),

V.

STATE OF WASHINGTON, *et al.*,

Respondent(s).

1 Petitioner Stillaguamish Tribe of Indians (“Stillaguamish”) and Respondent Upper Skagit
2 Indian Tribe (“Upper Skagit”) (collectively, “parties”) hereby jointly agree and stipulate as
3 follows.

4 1. PURPOSES AND LIMITATIONS

5 A Fed. R. Civ. P. 30(b)(6) deposition is scheduled for November 17, 2020, by Upper Skagit
6 of Stillaguamish. The deposition would have involved discussion of Topic 2 which sought the
7 financial condition of Stillaguamish since 1976. Discovery of this Topic 2 would have involved
8 discussion of sensitive, confidential, and proprietary information involving, among other things,
9 Stillaguamish’s finances and revenues from its business enterprises.

10 The parties have reached an agreement that will result in the withdrawal of Topic 2 by
11 Upper Skagit. Stillaguamish will make available for inspection and note taking within the next 21
12 calendar days from today’s date, at a mutually convenient place the Report of Independent
13 Auditor’s Report and Financial Statements with Supplemental Information for FY 2000-2017.
14 Stillaguamish will stipulate, solely for the purposes of any motion to dismiss (or for judgment on)
15 Upper Skagit’s affirmative defense of laches and for no other purpose, that the Court should treat
16 as true Upper Skagit’s allegation that Stillaguamish had the financial means to pursue the
17 gravamen of this sub-proceeding by 2001. Further, Stillaguamish agrees to provide the above-
18 referenced documents three weeks before defendant’s pretrial statement is due if there is not by
19 that date a ruling dismissing or granting Stillaguamish judgment on the defense (on or about April
20 15, 2021, based on the current Court order).

21 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
22 Stipulated Protective Order. The parties acknowledge that this agreement is generally consistent
23 with LCR 26(c), a redline version of which is filed herewith. It does not confer blanket protection
24 on all disclosures or responses to discovery, the protection it affords from public disclosure and
25 use extends only to the limited information or items that are entitled to confidential treatment under
26

1 the applicable legal principles, and it does not presumptively entitle parties to file confidential
2 information under seal.

3 2. **“CONFIDENTIAL” MATERIAL**

4 “Confidential” material shall include the following documents and tangible things
5 produced, or otherwise exchanged: the Stillaguamish Report of Independent Auditor's Report and
6 Financial Statements with Supplemental Information for FY 2000-2017.

7 3. **SCOPE**

8 The protections conferred by this agreement cover not only confidential material (as
9 defined above), but also (1) any information copied or extracted from confidential material; (2) all
10 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
11 conversations, or presentations by parties or their counsel that might reveal confidential material.

12 However, the protections conferred by this agreement do not cover information that is in
13 the public domain or becomes part of the public domain through trial or otherwise.

14 4. **ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

15 4.1 **Basic Principles.** A receiving party may use confidential material that is disclosed
16 or produced by another party or by a non-party in connection with this case only for prosecuting,
17 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
18 categories of persons and under the conditions described in this agreement. Confidential material
19 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
20 that access is limited to the persons authorized under this agreement.

21 4.2 **Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise ordered
22 by the court or permitted in writing by the designating party, a receiving party may disclose any
23 confidential material only to:

24 (a) the receiving party's counsel of record in this action, as well as employees
25 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

5 (c) experts and consultants to whom disclosure is reasonably necessary for this
6 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

7 (d) the court, court personnel, and court reporters and their staff;

12 (f) the author or recipient of a document containing the information or a
13 custodian or other person who otherwise possessed or knew the information.

14 4.3 Filing Confidential Material. Before filing confidential material or discussing or
15 referencing such material in court filings, the filing party shall confer with the designating party,
16 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
17 remove the confidential designation, whether the document can be redacted, or whether a motion
18 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
19 designating party must identify the basis for sealing the specific confidential information at issue,
20 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
21 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
22 the standards that will be applied when a party seeks permission from the court to file material
23 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
24 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
25 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
26 the strong presumption of public access to the Court's files.

1 5. **DESIGNATING PROTECTED MATERIAL**

2 5.1 **Exercise of Restraint and Care in Designating Material for Protection.** Each party
3 or non-party that designates information or items for protection under this agreement must take
4 care to limit any such designation to specific material that qualifies under the appropriate
5 standards. The designating party must designate for protection only those parts of material,
6 documents, items, or oral or written communications that qualify, so that other portions of the
7 material, documents, items, or communications for which protection is not warranted are not swept
8 unjustifiably within the ambit of this agreement.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
10 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
11 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
12 and burdens on other parties) expose the designating party to sanctions.

13 If it comes to a designating party's attention that information or items that it designated for
14 protection do not qualify for protection, the designating party must promptly notify all other parties
15 that it is withdrawing the mistaken designation.

16 5.2 **Manner and Timing of Designations.** Except as otherwise provided in this
17 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
18 ordered, disclosure or discovery material that qualifies for protection under this agreement must
19 be clearly so designated before or when the material is disclosed or produced.

20 (a) **Information in documentary form:** (*e.g.*, paper or electronic documents and
21 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
22 the designating party must affix the word "CONFIDENTIAL" to each page that contains
23 confidential material. If only a portion or portions of the material on a page qualifies for protection,
24 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
25 markings in the margins).

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8 (c) Other tangible items: the producing party must affix in a prominent place
9 on the exterior of the container or containers in which the information or item is stored the word
10 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
11 the producing party, to the extent practicable, shall identify the protected portion(s).

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
13 designate qualified information or items does not, standing alone, waive the designating party's
14 right to secure protection under this agreement for such material. Upon timely correction of a
15 designation, the receiving party must make reasonable efforts to ensure that the material is treated
16 in accordance with the provisions of this agreement.

17 | P a g e | 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
19 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
20 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
21 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
22 challenge a confidentiality designation by electing not to mount a challenge promptly after the
23 original designation is disclosed.

24 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
25 regarding confidential designations without court involvement. Any motion regarding confidential
26 designations or for a protective order must include a certification, in the motion or in a declaration

1 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
2 affected parties in an effort to resolve the dispute without court action. The certification must list
3 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
4 to-face meeting or a telephone conference.

5 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
6 intervention, the designating party may file and serve a motion to retain confidentiality under Local
7 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
8 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
9 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
10 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
11 the material in question as confidential until the court rules on the challenge.

12 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
13 LITIGATION

14 If a party is served with a subpoena or a court order issued in other litigation that compels
15 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
16 must:

17 (a) promptly notify the designating party in writing and include a copy of the
18 subpoena or court order;

19 (b) promptly notify in writing the party who caused the subpoena or order to
20 issue in the other litigation that some or all of the material covered by the subpoena or order is
21 subject to this agreement. Such notification shall include a copy of this agreement; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by
23 the designating party whose confidential material may be affected.

24 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
26 material to any person or in any circumstance not authorized under this agreement, the receiving

1 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
2 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
3 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
4 and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be
5 Bound" that is attached hereto as Exhibit A.

6 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
7 **MATERIAL**

8 When a producing party gives notice to receiving parties that certain inadvertently
9 produced material is subject to a claim of privilege or other protection, the obligations of the
10 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
11 is not intended to modify whatever procedure may be established in an e-discovery order or
12 agreement that provides for production without prior privilege review. The parties agree to the
13 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

14 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

15 Within 60 days after the termination of this action, including all appeals, each receiving
16 party must return all confidential material to the producing party, including all copies, extracts and
17 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

18 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
19 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
20 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
21 product, even if such materials contain confidential material.

22 The confidentiality obligations imposed by this agreement shall remain in effect until a
23 designating party agrees otherwise in writing or a court orders otherwise.

24 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

25 DATED this 16th day of November, 2020.

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3 PURSUANT TO STIPULATION, IT IS SO ORDERED

4 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
5 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
6 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
7 documents, including the attorney-client privilege, attorney work-product protection, or any other
8 privilege or protection recognized by law.

9 DATED: November 19, 2020.

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13 RICARDO S. MARTINEZ
14 CHIEF UNITED STATES DISTRICT JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on [date] in the
7 case of *United States of Washington, et al. v. State of Washington, et al.*, C70-9213, Subproceeding
8 17-03. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order
9 and I understand and acknowledge that failure to so comply could expose me to sanctions and
10 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
11 any information or item that is subject to this Stipulated Protective Order to any person or entity
12 except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

16 Date: _____

17 || City and State where sworn and signed: _____

18 Printed name: _____

19 || Signature: _____